

**[FILED]**

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CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY CW  
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*in pro per*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARK AUSSIEKER,

Plaintiff,

v.

ERC USA Advisors, LINDSAY  
HUGHES, SCOTT WEINBRAND  
Defendant(s)

No. 2:24-cv-00270-TLN-JDP (PS)

**COMPLAINT FOR DAMAGES**  
Trial by Jury not requested

1. Plaintiff Mark Aussieker (“Plaintiff” or “Mr. Aussieker”) brings this action to enforce the consumer protection provision in the California Tax Preparer act. PLAINTIFF was solicited to obtain an ERC tax credit. The ERC tax credit or “ERTC” gives eligible employers a tax credit for employing people through the pandemic. Fraud in the ERTC program has become so prevalent that it earned a place on the IRS's annual “Dirty Dozen” list of schemes and scams that make taxpayers vulnerable to personal and financial risk.

2. In *Loving v. IRS*<sup>1</sup> “Section 330 cannot be stretched so broadly as to encompass authority to regulate tax-return preparers”. California has the Tax Return Preparer act which is to safeguard the public from unscrupulous practices. As the public is now learning, a businesses is on the hook for financial penalties if an IRS audit determines their claim was fraudulent. Thousands of claims have been referred for audits, and federal officials have

<sup>1</sup> *Loving v. IRS*, 742 F. 3d 1013 - Court of Appeals, Dist. of Columbia Circuit 2014, pg 1015

1 opened more than 250 criminal investigations involving \$2.8 billion in possibly fraudulent  
2 claims<sup>2</sup>.

3 3. AUSSIEKER brings this action to enforce the consumer-privacy provisions of  
4 the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, a federal statute enacted  
5 in 1991 in response to widespread public outrage about the proliferation of intrusive, nuisance  
6 telemarketing practices. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

7  
8 4. The Defendants have placed telemarketing calls to a telephone number Mr.  
9 Aussieker owned without consent. Its not possible to "police" the estimated 60 billion  
10 robocalls made every year. The FCC Has Fined Robocallers \$208 Million and It's Collected  
11 \$6,7903.

12 5. This Complaint also relates to the Defendants making telemarketing calls to  
13 individuals in the absence of any "do not call" policy or training, as well as making such calls  
14 to individuals who previously indicated that they did not want to receive telemarketing calls  
15 when they registered their number on the national do not call registry.  
16

#### 17 PARTIES

18  
19 6. Plaintiff Mark Aussieker is an individual and resident of the state of California,  
20 and this District.

21 7. Defendant SCOTT WEINBRAND "WEINBRAND" is an individual and is a  
22 "person" as defined by 47 U.S.C. § 153 (39).

23 8. Defendant LINDSAY HUGHES "LINDSAY" is an individual and is a "person"  
24 as defined by 47 U.S.C. § 153 (39).

25 9. Defendant ERC USA Advisors "ERC USA" is an unincorporated business  
26

27  
28 <sup>2</sup> <https://www.axios.com/local/tampa-bay/2023/09/26/employee-retention-credit-tampa-florida-scam-irs>

<sup>3</sup> <https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803>

1 association. "ERC USA" is a "person" as defined by 47 U.S.C. § 153 (39).

2  
3  
4 Jurisdiction & Venue

5 10. The Court has federal question subject matter jurisdiction over these TCPA  
6 claims. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740 (2012).

7 11. Venue is proper pursuant to 28 U.S.C. § 1391 (b)(2) because the Plaintiff is a  
8 resident of this district, which is where he received the illegal telemarketing calls that are the  
9 subject of this lawsuit.

10 12. Venue is proper pursuant to 28 U.S.C. § 1391 (b)(2) because the Plaintiff is a  
11 resident of this district, which is where he was solicited to purchase the tax preparer services

12 13. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a  
13 substantial part of the events or omissions giving rise to the claims occurred within this  
14 District.

15 14. This Court has personal jurisdiction over the parties because Defendants called  
16 into the forum state by targeting a phone number in that forum and targeted the plaintiff.  
17 Likewise, Plaintiff's rights were violated in the State of California and his claims arose out of  
18 his contact with Defendants.

19 15. Plaintiff believes that DEFENDANTS had actual notice that he was a California  
20 resident because his phone number corresponds to a California area code.

21 16. Plaintiff was called and pitched tax preparer services.

22 17. The defendant's forum related activities are unsolicited telemarketing calls to a  
23 California resident which played a pre-recorded message, the natural invasion of privacy  
24 harm of those calls would not have happened but for the calls to California.

25 18. The defendant's forum related activities are tax preparer services directed to a  
26  
27  
28

1 California resident, the illegal manner in which those services were offered would not have  
2 happened but for the calls to California.

### 3 TCPA Background

4  
5  
6 19. TCPA Background In 1991, Congress enacted the TCPA to regulate the  
7 explosive growth of the telemarketing industry. In so doing, Congress recognized that  
8 “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy [.]” Telephone  
9 Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C.  
10 § 227).

11 20. The TCPA makes it unlawful “to initiate any telephone call to any residential  
12 telephone line using an artificial or prerecorded voice to deliver a message without the prior  
13 express consent of the called party, unless the call is initiated for emergency purposes, is  
14 made solely pursuant to the collection of a debt owed to or guaranteed by the United States; or  
15 is exempted by rule or order” of the Federal Communication Commission (“FCC”). 47 U.S.C.  
16 § 227(b)(1)(B).

17 21. The TCPA and implementing regulations require that calls with a pre-recorded  
18 message state clearly the identity of the business, individual, or other entity that is responsible  
19 for initiating the call. 47 C.F.R. § 64.1200(b)(1)

20 22. The TCPA provides a private cause of action to persons who receive calls in  
21 violation of § 227(b). 47 U.S.C. § 227(b)(3).

22 23. The regulations exempt from liability a caller who has obtained the subscriber’s  
23 signed, written agreement to receive telephone solicitations from the caller. 47 C.F.R. §  
24 64.1200(c)(2)(ii). That agreement must also include the telephone number to which the calls  
25 may be placed. Id.  
26  
27  
28

24. In *Sengenberger v. Credit Control Services, Inc.*<sup>4</sup>, the court held that "intentionally" making phone calls that violated the TCPA was sufficient to warrant treble damages because "although neither the TCPA nor the FCC regulations define the terms 'willfully or knowingly'...courts have generally interpreted willfulness to imply only that an action was intentional. Further, Sengenberger noted that while the TCPA does not define willful, the Communications Act of 1943, of which the TCPA is a part, defines willful as "the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision[ ], rule or regulation."

25. A corporate officer involved in the telemarketing at issue may be personally liable under the TCPA. E.g., *Jack on Five Star Catering, Inc. v. Season*, Case No. 10- 10010, 2013 US. Disk LEXIS 159985, at \*10 (E.D. Mich. Nov. 8, 2013) [M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute. (internal quotation marks omitted)); *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415 - 16 (D. Md. 2011) ( If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.").

#### Factual Allegations

26. Plaintiff MARK AUSSIEKER's phone number ending in 9144 is a voice over IP phone.

27. Plaintiff MARK AUSSIEKER's pays a flat monthly fee for his service.

28. The Commission has long recognized, and the record in this proceeding supports the same conclusion, that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. Wireless subscribers who purchase a large 'bucket'

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<sup>4</sup> *SENGENBERGER v. CREDIT CONTROL SERVICES, INC.* (N.D.Ill. 5-5-2010)



1 of minutes at a fixed rate nevertheless are charged for those minutes, and for any minutes that  
2 exceed the 'bucket' allowance." ). The court does not disagree that a call charge on the "front  
3 end" might qualify for purposes of the charged call provision under the TCPA. Nevertheless,  
4 the called party must be charged for the call for there to be a violation of § 227(b)(1)(A)(iii)  
5 where the calls are made to a number not assigned to certain enumerated services, ie., a  
6 paging service, cellular telephone service, specialized mobile radio service or other radio  
7 common carrier service. Klein v. Commerce Energy, Inc., 256 F. Supp. 3d 563 - Dist. Court,  
8 WD Pennsylvania 2017

9  
10 29. PLAINTIFF pays a monthly charge of \$24.55 for unlimited service compared to  
11 some VOIP providers charge 1.7 cents per minute<sup>5</sup>.

12  
13  
14 30. Plaintiff received five phone calls that played a pre-recorded message. The same  
15 message played from previous calls.

16 31. The website nomorobo recorded the greeting and the same message from the  
17 same caller id that I received A copy of the recording can be found at  
18 <https://www.nomorobo.com/lookup/707-892-4924>. Plaintiff attaches copies of the website for  
19 both of the relevant calls at EXHIBIT C

20  
21 32. The calls violated 47 U.S.C. § 227(b)(1)(A)(iii) because the calls featured a pre-  
22 recorded voice and the calls were made to a number where the plaintiff is charged for the call.

23  
24 33. Plaintiff compiled a list of the calls placed to his cell and attaches them as Exhibit  
25 A. ALL calls are in 2023

26 34. One call was on 1/24 from 707-892-4924 which had a pre-recorded message.

27  
28 <sup>5</sup> Perrong v. Victory Phones LLC CIVIL ACTION No. 20-5317 2021 U.S. Dist. LEXIS 132404 (E.D. Pa. July 15, 2021)

1 The same message played from previous calls. NOMO robo also reported the same pre  
2 recorded message being played. After the message played, PLAINTIFF was connected to a  
3 representative who said she was in the ERC department and confirmed that PLAINTIFF  
4 wanted to get an ERC tax refund and would transfer PLAINTIFF to an "IRS advisor". The  
5 representative asks basic qualifying questions like if they have already received the credit,  
6 how many employees and if there was a hardship. PLAINTIFF feigned interest and said she  
7 would transfer to call to one of her agents who were registered with the IRS.  
8

9 35. After she transferred the call, a person named SCOTT WEINBRAND came onto  
10 the line. Mr. WEINBRAND said he charged 1.5% upfront at the time the amended returns  
11 were filed with the IRS. Upon approval from the IRS, his firm would take %15. Mr.  
12 WEINBRAND justified his fee in writing. The process that the company followed is  
13 attached as EXHIBIT B.  
14

15 36. Mr. WEINBRAND inquired with the plaintiff how many employees and payroll.

16 37. Mr. WEINBRAND encouraged PLAINTIFF to visit his website to learn more  
17 about the company and to upload his documents.

18 38. , www.ercusa.biz gave a fake address in New York and an email address to  
19 support@ercusa.com. The website also gave an address of 50 Biscayne Blvd, Miami FL  
20 33132. PLAINTIFF complained to the owner of ercusa.com. CAMRON SAVAGE, the  
21 member manager for CODERON LLC d/b/a/ ERC USA denied that ercusa.com was  
22 connected to ercusa.biz He said that someone copied his website and that a MR.  
23 WEINBRAND never worked for him.  
24  
25  
26  
27  
28

Q All Maps Shopping Images Videos : More

Tools

About 2 results (0.20 seconds)

ercusa.biz  
https://ercusa.biz/contact :

### Contact – ERCUSA

Send E-Mail: [hello@ercusa.com](mailto:hello@ercusa.com). Location: 1 S. Clinton Avenue Rochester, NY 14607. Office Number: +1 877-463-6654. Varlik 3@10x. Refunds · Who We Are?



39. www.ercusa.biz copied a website of Innovation Refunds, including the reviews which identified Innovation Refunds as the service provider. PLAINTIFF contacted Innovation Refunds who confirmed that www.ercusa.biz copied their website.

40. Innovation Refunds sent a takedown request and requested subpoenas to identify the owners of the website for the infringing content found on ercusa.biz<sup>6</sup>.

41. One such claim made on the website was that ERC USA had helped their clients get over 5 Billion in refunds.

42. Defendant ERC USA instructs the call opener, hereinafter OPENER and subsequent caller to not reveal the true name of identity of ERC USA.

43. Defendant ERC USA willfully accepts leads from OPENER that are generated through illegal telemarketing because these leads benefit Defendant ERC USA financially.

44. Defendant ERC USA approves and ratifies OPENER's behavior for violating the TCPA because it benefits Defendant ERC USA financially.

45. Defendant ERC USA approves of the contracts with OPENER.

46. Defendant ERC USA authorizes the payments to OPENER.

47. Defendants ERC USA pays OPENER out of bank accounts that he controls.

48. Defendant ERC USA are well aware that the unauthorized phone calls being

<sup>6</sup> Innovation Refunds LLC v. GoDaddy.com, LLC (1:23-mi-00034) District Court, N.D. Georgia ecf #1 Exhibit C is affidavit from General Counsel of Innovation attesting to the infringing material. Exhibit D is takedown request



1 made on their behalf by OPENER soliciting Defendant ERC USA because there is an  
2 inference that using a fake name shows awareness of illicit activity.

3 49. Defendant ERC USA ratifies OPENER's illegal telemarketing behavior  
4 because it benefits Defendant ERC USA financially. OPENER made at least five harassing  
5 calls to Plaintiff calling on behalf of Defendant ERC USA before Plaintiff was able to identify  
6 the company OPENER was calling on behalf of.

7  
8 50. Plaintiff has never had an established business relationship with Defendant ERC  
9 USA and never knew who Defendant ERC USA was prior to the calls.

10 51. Upon information and belief Plaintiff has received additional calls within the past  
11 year from OPENER calling on behalf of Defendant ERC USA soliciting tax refund services  
12 that are unknown to Plaintiff at this time but will be revealed during discovery.

13  
14 52. Plaintiff answered and was connected to a male telemarketer with a thick  
15 overseas accent.

16 53. The OPENER does not actually process a tax refund but will transfer the call to  
17 ERC USA to have them perform those services.

18  
19 54. There is a coordinated marketing campaign between ERC USA and OPENER  
20 that allows OPENER to solicit the customers for ERC USA and qualify customers for ERC  
21 USA. ERC USA instructs OPENER to not reveal ERC USA's true identity.

22 55. ERC USA gets copies of the recording in the event the call that is transferred  
23 does not meet standards that ERC USA sets.

24  
25 56. DEFENDANT ERC USA tasks OPENER with informing PLAINTIFF that the  
26 call will be transferred to an agent that is registered with the IRS instead of truthfully telling  
27 them the identity the party who receives the transfer.

1       57.       DEFENDANT ERC USA controls OPENER by not accepting leads that do not  
2 conform with the standards set out above.

3  
4       58.       PLAINTIFF believes these statements would qualify as “tax preparer services”  
5 pursuant to Cal. Bus. & Prof. Code § 22251 a1(a) “A person who, for a fee or for other  
6 consideration, assists with or prepares tax returns for another person or who assumes final  
7 responsibility for completed work on a return on which preliminary work has been done by  
8 another person, or who holds himself or herself out as offering those services A person  
9 engaged in that activity shall be deemed to be a separate person for the purposes of this  
10 chapter, irrespective of affiliation with, or employment by, another tax preparer.  
11

12       59.       WEINBRAND, HUGHES and ERC USA are each a separate person under the  
13 statute, so each violation is a violation of that person.

14       60.       Defendants WEINBRAND, HUGHES and ERC USA performed tax preparer  
15 services for a fee because WEINBRAND emailed on 1/24/2023 and claimed “On average, we  
16 are getting customers 15-22% more than other companies while charging a lower success fee.  
17 It truly is a win-win”. HUGHES also made the same claim on her email on 3/9/23. The fact  
18 that same language is used in both emails, it appears that ERC USA directed and controlled  
19 HUGHES and WEINBRAND to make such statements, thus ERC USA does the same.  
20

21       61.       Defendants WEINBRAND, HUGHES and ERC USA assists with or prepares tax  
22 returns for another person or who assumes final responsibility for completed work on a return  
23 on which preliminary work has been done by another person, or who holds himself or herself  
24 out as offering those services because WEINBRAND told PLAINTIFF that he would upload  
25 his tax returns and documents through their website. Once that happened, the returns would  
26 be analyzed, and the accounting team would prepare and file the tax returns. HUGHES  
27  
28

1 requested that PLAINTIFF submit his returns to the back office and explained over the phone  
2 the back office will calculate the refund and also prepare and file the amended tax returns.  
3 These statements are also reflected in her email on 3/9/23

4 62. ERC USA provided advice, by offering to act or acting as an intermediary,  
5 including, but not limited to, determining eligibility based on number of employees, assisting  
6 in calculating the refund, hosting videos that explain how to claim the refund, answering  
7 questions about the program, charging a fee only if the refund was successful, assisting with  
8 the preparation of returns and submission of the returns. The

9  
10 63. DEFENDANTS determine eligibility based on number of employees because  
11 WEINBRAND and HUGHES ask how many employees PLAINTIFF had and if he had any  
12 relatives. PLAINTIFF believes that relatives count different towards eligibility and there  
13 needs to be a minimum number of employees who are not related to or own the company.  
14 WEINBRAND and HUGHES both asked PLAINTIFF how many employees he had thus they  
15 are determining eligibility if in fact a certain number of employees is needed in order to  
16 qualify for the ERTC.  
17

18 64. WEINBRAND and HUGHES held themselves out as offering the services  
19 because they said that " We will have your refund calculation and docs ready by the next  
20 scheduled call" .  
21

22 65. ERC USA hosted videos that explains what the ERTC credit is on their website  
23 and through emails.

24 66. WEINBRAND and HUGHES held themselves out as offering the services  
25 because they were answering questions about the program and boasting how their firm was  
26 able to achieve better results compared to other firms. Specifically, "we are getting customers  
27 15-22% more than other companies while charging a lower success fee". The same language  
28

1 is used in both emails, it appears that ERC USA directed and controlled HUGHES and  
2 WEINBRAND to make such statements, thus ERC USA does the same.

3 67. WEINBRAND and HUGHES only charged a fee if they were successful, thus  
4 indicating that there was a high degree of confidence in the leads being given.

5 68. WEINBRAND and HUGHES assist with the preparation of returns and  
6 submission of the returns by encouraging them to be uploaded onto their website and by  
7 hiring programmers to allow the submission of those returns.

8 69. Defendant's calls constituted calls that were not for emergency purposes as  
9 defined by 47 U.S.C. § 227(b)(1)(A).

10 70. During all relevant times, Defendant did not possess Plaintiff's "prior express  
11 consent" to receive calls using an automatic telephone dialing pursuant to 47 U.S.C. §  
12 227(b)(1)(A). The calls are impersonal advertisements: they do not address Plaintiff  
13 personally and they are only meant to generate calls to Defendant business.

14 71. Plaintiff declares that he has never heard of Defendant ERC USA or, visited any  
15 location operated by either Defendant prior to the harassing and annoying calls, nor provided  
16 his cellular telephone numbers to said Defendants or consented to receive calls from  
17 Defendant. Plaintiff also has had no prior business relationship with Defendant. Plaintiff had  
18 no reason to be in contact with Defendants, nor had he previously purchased any kind of  
19 product or service

20 72. Mr. Aussieker's concrete injury as it relates to the Spokeo decision is loss of  
21 productivity for answering the call, , defendants bothering him with unrequested  
22 solicitations, hearing that he missed out on a tax credit.

23 73. Mr. Aussieker did not welcome these calls.

24 74. Defendant's calls harmed the Plaintiff by causing the very harm that Congress  
25  
26  
27  
28

sought to prevent- a nuisance and invasion of privacy.

75. Defendant's solicitation of tax services have harmed the Plaintiff by causing the him to think that he was missing out on a tax credit.

#### FORMAL AGENCY

76. Actual authority is limited to actions "specifically mentioned to be done in a written or oral communication" or "consistent with" a principal's "general statement of what the agent is supposed to do." Salyers, 871 F.3d at 940 (quoting NLRB v. Dist. Council of Iron Workers of the State of Cal. and Vicinity, 124 F.3d 1094, 1098 (9th Cir. 1997)). In the training video,

77. It appears that ERC USA gave absolute control for the generating of sales to OPENER. This is sufficient to show an agency relationship because ERC USA set out specific criteria of who was to be contacted and what OPENER must deliver. ERC USA set a sales process where OPENER would do the heavy lifting and locating of potential customers that allowed ERC USA to spend their time working with qualified leads at PLAINTIFF's expense.

78. Implied actual authority comes from a general statement of what the agent is supposed to do; an agent is said to have the implied authority to do acts consistent with that direction. Hawaiian Paradise Park Corp. v. Friendly Broadcasting Co., 414 F.2d 750, 755 (9th Cir. 1969)

79. Apparent authority arises from the principal's manifestations to a third



1 party that supplies a reasonable basis for that party to believe that the principal has  
2 authorized the alleged agent to do the act in question. *NLRB v. Donkin's Inn*, 532 F.2d  
3 138, 141 (9th Cir. 1976), cert. denied, 429 U.S. 895 (1976). If the District Council  
4 (principal) supplied a reasonable basis for Coker (third party) to believe that it had  
5 authorized Sorensen (agent) to modify the Standard Agreement, no ratification would  
6 be required. *Nat'l Labor Relations Bd. v. District Council of Iron Workers of*  
7 *California & Vicinity*, 124 F.3d 1094, 1099 (9th Cir. 1997) In PLAINTIFFS view,  
8 OPENER gave PLAINTIFF a reasonable basis to believe that OPENER who  
9 contacted PLAINTIFF was authorized to operate on behalf ERC USA because  
10 OPENER explained the program and informed him he was qualified for the ERTC  
11

12 80. PLAINTIFF was transferred directly to the MR. WEINBRAND after he  
13 expressed interest in tax refund services from the OPENER which created “a  
14 reasonable inference that the telemarketers were authorized by DEFENDANTS to  
15 find clients for them.  
16

17 81. PLAINTIFF is aware that marketers will put language in a contract that  
18 prohibits the vendor from violating state or federal law. (“Any claim that [Defendant] had  
19 actual authority to place the calls is precluded by the express language in [Defendant’s]  
20 contract . . . expressly prohibiting telemarketing methods that would violate state or  
21 federal law, including laws governing robocalls.”) See *Jones v. Royal Admin. Svcs., Inc.*,  
22 887 F.3d 443, 446 (9th Cir. 2018).  
23

24 82. If there is an argument that ERC USA is not responsible for the calls due to  
25 a contractual relationship- PLAINTIFF will ask the court to evaluate whether or not the  
26 underlying agreement is enforceable when the object of the contract requires that  
27 OPENER solicit people which may violate state law.  
28

83. Restatement of Agency 2d put foreseeable acts within the scope of employment. Putting compliance to the TCPA within the contract clearly shows that TCPA violations were foreseen

#### Agency Liability

84. In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 27 FCC Red. 1830, 1844 33 (2012) (footnote and internal quotation marks omitted). FCC regulations “generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, 10 FCC Red. 12391, 12397 13 (1995).

85. It appears that ERC USA has “both the right: (1) to assign the agent’s task; and (2) to control the means and details of the process by which the agent will accomplish that task because ERC US controls the hours in which calls are made and the questions that the call opener makes.

#### PERSONAL LIABILITY

86. The TCPA is part of the Communications Act. Under the TCPA, an individual may be personally liable under 47 U.S.C. § 217. This section provides the “the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”

87. The identity and name of the member manager or the person in charge of ERC USA is unknown. The person in charge of the ERC USA is involved in day to day

1 operations and would have the power to set the criteria for which leads ERC USA would  
2 accept and he or she chose to accept calls there were generate by Pre recorded messags.  
3 As such, the person in charge is liable if the person can be identified. It is also possible  
4 that ERC USA offers some sort of franchise model where each agent operates as an  
5 independent contractor.  
6

7  
8 **COUNT 1**

9 **Violation of the California Tax Preparation Act CA Civil Code**

10 **§22250 et seq**

11 88. PLAINTIFF charges Count ONE against ERC USA

12 89. Plaintiff hereby incorporates, as if fully rewritten herein, all foregoing  
13 paragraphs.  
14

15 90. Defendant ERC USA performed preparation services under Cal. Bus. & Prof.  
16 Code § 22251 a1(a) because for compensation they assisted or held themselves out as being  
17 able to assist in the amendment of tax returns to claim a tax refund under the ERTC. Their  
18 actions as detailed above.  
19

20 91. Under the act, Cal. Bus. & Prof. Code § 22253(a) (1) it is a violation to do any of  
21 the following: Fail to register as a tax preparer with the council. Here, ERC USA is not  
22 registered with CTEC as a tax preparer with the council because their name does not appear in  
23 the CTEC directory.

24 92. Under the act, Cal. Bus. & Prof. Code § 22253(a) (2) it is a violation to do any of  
25 the following: (2) Make, or authorize the making of, any statement or representation which is  
26 intended to induce persons to use the tax preparation service of the tax preparer, which  
27 statement or representation is fraudulent, untrue, or misleading. Here, ERC USA claims that  
28

1 On average, we are getting customers 15-22% more than other companies while charging a  
2 lower success fee. This is either untrue or misleading because the tax credit is formulaic and  
3 not based on the skill or judgement of the person amending the tax return. ERC USA copied  
4 reviews from other tax preparation companies and passed those reviews off as being reviews  
5 from their customers. ERC USA claimed to have helped recover over 5 billion in credits  
6 which is untrue.  
7

8 93. Under the act, Cal. Bus. & Prof. Code § 22253(a) (6) it is a violation to do any of  
9 the following: (6) Engage in advertising practices which are fraudulent, untrue, or misleading,  
10 including, but not limited to, assertions that the bond required by Section 22250.1 in any way  
11 implies licensure or endorsement of a tax preparer by the State of California. Here ERC USA  
12 uses a website that is copied from other Innovation Refunds and ercusa.com. ERC USA  
13 copied reviews from other tax preparation companies and passed those reviews off as being  
14 reviews from their customers. ERC USA claimed to have helped recover over 5 billion in  
15 credits which is untrue. ERC USA claimed that the legal name of their entity was ERC USA  
16 when in fact no such entity was able to be located under that name.  
17

18  
19 94. Under the act, Cal. Bus. & Prof. Code § 22253(a) (11) it is a violation to do any  
20 of the following: (11) Knowingly give false or misleading information to the consumer  
21 pursuant to Section 22252, or give false or misleading information to the surety company  
22 pursuant to subdivision (a) of Section 22250.1, or give false or misleading information to the  
23 California Tax Education Council pursuant to Section 22255. Here, ERC USA has given  
24 false or misleading information as far as their name and address because the address in Miami  
25 is for a condo complex and it is not possible to reach anyone without having a unit number.  
26 Lying by omission, also known as a continuing misrepresentation occurs when an important  
27  
28

fact is left out in order to foster a misconception. Here the suite number was omitted and thus the address given is useless.

95. Under the act, Cal. Bus. & Prof. Code §22250.1 (a) a tax preparer is required to obtain a bond. Here, ERC USA failed to get a bond.

96. Under the act, Cal. Bus. & Prof. Code § 22253(b) (b) Each violation of this section constitutes a separate offense.

97. Under the act, Cal. Bus. & Prof. Code §22256 Statutory damages in an amount to be determined by the court of no less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) per violation of this title. PLAINTIFF pleads 5 violations of the act.

98. Accordingly, PLAINTIFFF is entitled to damages and asks for maximum damages of \$5,000

## **COUNT 2**

### **Violation of the California Tax Preparation Act CA Civil Code**

#### **§22250 et seq**

99. PLAINTIFF charges Count TWO against SCOTT WEINBRAND

100. Plaintiff hereby incorporates, as if fully rewritten herein, all foregoing paragraphs.

101. Defendant SCOTT WEINBRAND performed preparation services under Cal. Bus. & Prof. Code § 22251 al(a) because for compensation he assisted or held himself out as being able to assist in the amendment of tax returns to claim a tax refund under the ERTC.



1 His actions are detailed above. Mr. WEINBRAND referred to himself as an “ERC  
2 ADVISOR” for “ERC USA Advisors” He made statements like his firm was able to get  
3 larger tax refunds compared to other firms indicating that by utilizing Mr. WEINBRANDS  
4 services, PLAINTIFF would see a higher tax credit.

5  
6 102. Under the act, Cal. Bus. & Prof. Code § 22253(a) (1) it is a violation to do any of  
7 the following: Fail to register as a tax preparer with the council. Here, WEINBRAND is not  
8 registered with CTEC as a tax preparer with the council because his name does not appear in  
9 the CTEC directory.

10 103. Under the act, Cal. Bus. & Prof. Code § 22253(a) (2) it is a violation to do any of  
11 the following: (2) Make, or authorize the making of, any statement or representation which is  
12 intended to induce persons to use the tax preparation service of the tax preparer, which  
13 statement or representation is fraudulent, untrue, or misleading. Here, WEINBRAND claims  
14 that “On average, we are getting customers 15-22% more than other companies while  
15 charging a lower success fee. This is either untrue or misleading because the tax credit is  
16 formulaic and not based on the skill or judgement of the person amending the tax return”.

17  
18 104. Under the act, Cal. Bus. & Prof. Code § 22253(a) (6) it is a violation to do any of  
19 the following: (6) Engage in advertising practices which are fraudulent, untrue, or misleading,  
20 including, but not limited to, assertions that the bond required by Section 22250.1 in any way  
21 implies licensure or endorsement of a tax preparer by the State of California. Here  
22 WEINBRAND uses a website and email address for a company that does not appear to exist.  
23 When he was asked about the real name, MR. Weinbrand claims to not know. Lying by  
24 omission, also known as a continuing misrepresentation, occurs when an important fact is left  
25 out in order to foster a misconception. Lying by omission includes the failure to correct pre-  
26 existing misconceptions. Initially, Mr. Weinbrand did not respond to inquiries about who he  
27  
28

1 actually worked for. There is a question of fact as to whether or not he should be required to  
2 remember who he worked for a year ago.

3 105. Under the act, Cal. Bus. & Prof. Code § 22253(a) (11) it is a violation to do any  
4 of the following: (11) Knowingly give false or misleading information to the consumer  
5 pursuant to Section 22252. Here, WEINBRAND has given false or misleading information as  
6 far as identifying himself as working for “ERC USA Advisors” when in fact he should have  
7 known this was false. Mr. WEINBRAND told PLAINTIFF to upload his documents to  
8 <https://ercusa.biz/erc-submission-form-sw> . It is believed that when WEINBRAND was hired  
9 or agreed to his compensation package that some sort of offer was made to him for  
10 employment which would have identified the company in which he was working for.  
11 WEINBRAND knew of should have known that the offer of employment did not match the  
12 email address or company name that he supplied to potential customers. WEINBRAND knew  
13 of should have known by visiting the website that something was wrong when the website  
14 appeared to have testimonials for other companies. A reasonable person would have looked at  
15 the company website and been able to determine that the company was not legitimate.

16 106. Under the act, Cal. Bus. & Prof. Code §22250.1 (a) a tax preparer is required to  
17 obtain a bond. Here, WEINBRAND failed to get a bond.

18 107. Under the act, Cal. Bus. & Prof. Code § 22253(b) (b) Each violation of this  
19 section constitutes a separate offense.

20 108. Under the act, Cal. Bus. & Prof. Code §22256 Statutory damages one thousand  
21 dollars (\$1,000) per violation of this title. PLAINTIFF pleads 5 violations of the act.

22 109. Accordingly, PLAINTIFFF is entitled to damages and asks for maximum  
23 damages of \$5,000  
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**COUNT THREE**

**Violation of the California Tax Preparation Act CA Civil Code**

**§22250 et seq**

110. PLAINTIFF charges Count THREE against HUGHES

111. Plaintiff hereby incorporates, as if fully rewritten herein, all foregoing paragraphs.

112. Defendant HUGHES performed preparation services under Cal. Bus. & Prof. Code § 22251 a1(a) because for compensation she assisted or held herself out as being able to assist in the amendment of tax returns to claim a tax refund under the ERTC. Her actions are detailed above. HUGHES referred to herself as an “ERC ADVISOR” for “ERC USA Advisors” She made statements like her firm was able to get larger tax refunds compared to other firms indicating that by utilizing HUGHES services, PLAINTIFF would see a higher tax credit.

113. Under the act, Cal. Bus. & Prof. Code § 22253(a) (1) it is a violation to do any of the following: Fail to register as a tax preparer with the council. Here, HUGHES is not registered with CTEC as a tax preparer with the council because her name does not appear in the CTEC directory.

114. Under the act, Cal. Bus. & Prof. Code § 22253(a) (2) it is a violation to do any of the following: (2) Make, or authorize the making of, any statement or representation which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading. Here, HUGHES claims that “On average, we are getting customers 15-22% more than other companies while charging a lower success fee. This is either untrue or misleading because the tax credit is formulaic and not based on the skill or judgement of the person amending the tax return.

1        115.        Under the act, Cal. Bus. & Prof. Code § 22253(a) (6) it is a violation to do any of  
2        the following: (6) Engage in advertising practices which are fraudulent, untrue, or misleading,  
3        including, but not limited to, assertions that the bond required by Section 22250.1 in any way  
4        implies licensure or endorsement of a tax preparer by the State of California. Here HUGHES  
5        uses a website and email address for a company that does not appear to exist. PLAINTIFF  
6        complained to her via email and was ignored, thus there was a continuing misrepresentation.

7  
8        116.        Under the act, Cal. Bus. & Prof. Code § 22253(a) (11) it is a violation to do any  
9        of the following: (11) Knowingly give false or misleading information to the consumer  
10       pursuant to Section 22252. Here, HUGHES has given false or misleading information as far  
11       as identifying herself as working for “ERC USA Advisors” when in fact she should have  
12       known this was false. HUGHES told PLAINTIFF to upload his documents to  
13       <https://ercusa.biz/erc-submission-form-lh>. It is believed that when HUGHES was hired or  
14       agreed to her compensation package that some sort of offer was made to her employment  
15       which would have identified the company in which he was working for. HUGHES knew of  
16       should have known that the offer of employment did not match the email address or company  
17       name that she supplied. HUGHES knew of should have known by visiting the website that  
18       something was wrong when the website appeared to have testimonials for other companies. A  
19       reasonable person would have looked at the company website and been able to determine that  
20       the company was not legitimate.

21  
22  
23       117.        Under the act, Cal. Bus. & Prof. Code §22250.1 (a) a tax preparer is required to  
24       obtain a bond. Here, HUGHES failed to get a bond.

25       118.        Under the act, Cal. Bus. & Prof. Code § 22253(b) (b) Each violation of this  
26       section constitutes a separate offense.

27       119.        Under the act, Cal. Bus. & Prof. Code §22256 Statutory damages one thousand  
28

1 dollars (\$1,000) per violation of this title. PLAINTIFF pleads 5 violations of the act.

2 120. Accordingly, PLAINTIFFF is entitled to damages and asks for maximum  
3 damages of \$5,000  
4

5  
6 **COUNT 4**

7 **Violation of the Telephone Consumer Protection Act, 47 U.S.C.**

8 **§227(b)(1)(A)(iii) – Auto Dialer**

9 121. Plaintiff hereby incorporates, as if fully rewritten herein, all foregoing paragraphs.

10 122. Defendant placed 5 telemarketing calls to the Plaintiff which played a pre-recorded  
11 message  
12

13 123. PLAINTIFF was charged for the calls.

14 124. DEFENANDT failed to produce proof that they had permission to make these calls.

15 125. Defendant's own conduct (by placing a Call to Plaintiff's telephone which played a pre-  
16 recorded message, violated 47 C.F.R. § 64.1200(a)(2) and 47 U.S.C. § 227(b)(1)(A)(iii) and,  
17 therefore, Plaintiff is entitled to an award of statutory damages in the minimum amount of \$500  
18 for this violation.  
19

20 126. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b),  
21 Plaintiff is entitled to an award of \$1,500.00 in statutory damages, for each and every violation,  
22 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C). Specifically, making so  
23 many calls that NOMOROBO captures and dedicates a weboage to alert people about the calls.  
24  
25  
26  
27  
28



PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against ERC USA Advisors, LINDSAY HUGHES, SCOTT WEINBRAND jointly and severally for the following:

127. Injunctive relief prohibiting such violations of the TCPA by Defendants in the future.

128. For an order finding for the plaintiff on Count 1-4

129. For an order finding the defendant ERC USA knowingly and willfully violated the TCPA.

130. An award against ERC USA of \$500 per call for the 5 calls which amounts to \$2,500 in statutory damages as prescribed under 47 U.S.C. § 227(b)(3)(B) This amount be tripled to \$7,500 as prescribed under 47 U.S.C. § 227(b)(3)(C)

131. For an order finding TCPA intentional violations jointly and severally against the corporation and individual for the 5 calls.

132. An award of \$5,000 against ERC USA for COUNT ONE and the injunctive relief requested against ERC USA

133. An award of \$5,000 against SCOTT WEINBRAND for COUNT TWO

134. An award of \$5,000 against LINDSAY HUGHES for COUNT THREE

135. Any other relief the court deems proper.

Respectfully Submitted this 18<sup>th</sup> January, 2024.

Certification and Closing Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise

1 complies with the requirements of Rule 11. I agree to provide the Clerk's Office with any  
2 changes to my address where case-related papers may be served. I understand that my failure  
3 to keep a current address on file with the Clerk's Office may result in the dismissal of my  
4 case.

Date of signing: 18th Day of January, 2024.

Signature of Plaintiff

5 Printed Name of Plaintiff Mark Aussieker

EXHIBIT A

24-Jan	8:38 AM	"WINDSOR CA"	17078924924	916-290-9144	0:11:31	Normal incoming or outgoing phone call.
18-Jan	12:59 PM	"Robo? Name Unav"	12097031987	916-290-9144		Normal incoming or outgoing phone call.
18-Jan	8:33 AM	"Robo? Name Unav"	12097031987	916-290-9144		Normal incoming or outgoing phone call.
17-Jan	12:18 PM	"Robo? Name Unav"	12097031987	916-290-9144	0:00:41	Voicemail deposit
17-Jan	9:16 AM	"Robo? Name Unav"	12097031987	916-290-9144	0:00:40	Voicemail deposit

2023

EXHIBIT B

**HOW WILL THE PROCESS WORK?**

After completing the application **HERE** the next steps are..

**01.  
Gathering  
Documents**

After completing our application one of our representatives will contact you to assist in gathering all necessary documents.

**.02  
Tax Credit  
Calculation**

Our team will use their expertise to calculate how much credit you can receive from the IRS.

**.03  
Return Prep**

Our Accounting team will then prepare and help file the 941-X Amended payroll returns.

**.04  
Get Paid**

The IRS will process the credit and mail you a check directly.

## EXHIBIT C

https://www.nomorobo.com/lookup/209-703-1987

Started Most Visited HBO Max 1 in SDS Plus Type Var... Find CA code SOS CA Online Index of Recor... ter FlightConnections - All... Settings - aussieker1@... Statutes & C

## Nomorobo

Stop robocalls now

### ROBOCALLER WARNING!

(209) 703-1987 · Top Robocalls · Home

## (209) 703-1987 is a Robocall

Do not answer.

#### LISTEN



#### TRANSCRIPT

Department with an urgent message. Our records indicate that you have not yet filed for your Cares Act employee retention refund. Due to the COVID-19 Cares Act, every company that have five or more w two employees in 2020 or 2021 are owed a refund up to \$26,000 per employee. Press one so we can show you how to file and review the amount owed. The IRS deadline is coming up soon, so press one to file for your refund up to \$26,000 per employee. If you are refild, press two or dial 877-235-8716 to opt out.

#### DATE BLOCKED

January 19, 2023

#### CALL ACTIVITY

Low Last detected 4 days ago

### ROBOCALLER WARNING!

(707) 892-4924 · Top Robocalls · Home

## (707) 892-4924 is a Robocall

Be cautious.

#### LISTEN



#### TRANSCRIPT

Department with an urgent message. Our records indicate that you have not yet filed for your Cares Act employee retention refund. Due to the COVID-19 Cares Act, every company that had five or more to view two employees in 2020 or 2021 are owed a refund up to 26 \$0 per employee. Press one so we can show you how to file and review the amount owed. The IRS deadline is coming up soon, so press one to file for your refund up to 2020, \$6,000 per employee. If you already filed, press two or dial 877-205-8716 to opt out.

#### DATE BLOCKED

May 16, 2023

#### CALL ACTIVITY

Low Last detected 8 months ago